

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Status Conference - Courtroom 3
9 Friday, 12 November 2021
10 (The hearing starts in open session at 9.40 a.m.)
11 THE COURT USHER: [9:40:47] All rise. The International Criminal Court is now in
12 session. Please be seated.
13 PRESIDING JUDGE KORNER: [9:41:27] Yes, good morning everybody. Could you
14 call the case, please, Registrar.
15 THE COURT OFFICER: [9:41:36] Good morning, Madam President, good morning,
16 your Honours. This is the situation in Darfur, Sudan, in the case of The Prosecutor
17 versus Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case number
18 ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [9:41:56] Yes, thank you.
21 Yes, could we have the appearances for the Prosecution, please.
22 MR NICHOLLS: [9:42:02] Good morning, your Honours. Good morning
23 everybody in the courtroom and attending by video link. My name is Julian
24 Nicholls. I'm here today with Claire Sabatini, our case manager, as well as trial
25 lawyers, Hesham Mourad and Pubudu Sachithanandan. Thank you.

1 PRESIDING JUDGE KORNER: [9:42:19] Yes, thank you.

2 And appearances for the Defence, please.

3 MR LAUCCI: [9:42:22](Interpretation) Good morning, your Honour, your Honours.

4 Good morning, dear colleagues.

5 For the Defence this morning, by distance -- by video conference, my colleague,

6 Mr Iain Edwards; Madam Vanessa Grée, legal counsellor; Ahmad Issa, case manager;

7 Mohamed Manaa, linguistic assistant; and myself, Cyril Laucci, lead counsel.

8 PRESIDING JUDGE KORNER: [9:42:57] Yes, good morning.

9 And appearances for the victims.

10 MS VON WISTINGHAUSEN: [9:43:07] Yes, good morning, Madam President.

11 Good morning, your Honours. Good morning to everybody in the courtroom and

12 attending remotely. My name is Natalie von Wistinghausen. I'm representing the

13 victims, together with Mr Abdalla who's attending remotely, who maybe wants to

14 introduce himself as well. Thank you.

15 PRESIDING JUDGE KORNER: [9:43:24] Yes. Well, I don't think we need to have

16 two introductions.

17 Thank you very much, Ms Wistinghausen.

18 Yes, and, finally, from the Registry.

19 MR MAHR: [9:43:38] Good morning, Madam President. Good morning, your

20 Honours. Good morning, colleagues. My name is Christian Mahr. I'm the

21 Director for External Operations at the Registry. I'm joined here this morning by

22 Philipp Ambach, who's the Chief of the Victims' Participation and Reparations

23 Section, VPRS; another VPRS colleague, Olivier Randon. I'm also joined by Miša

24 Rožej with the Registry's Legal Office; and Kiyonobu Futori from the Country

25 Analysis Unit as well.

1 Thank you very much.

2 PRESIDING JUDGE KORNER: [9:44:14] Yes. Thank you.

3 Mr Laucci, do I gather that Mr Al-Rahman's here or -- I can't see. Or is he actually
4 still at the --

5 MR LAUCCI: [9:44:22](Interpretation) He's following us at a distance. You can't
6 see him on the screen, but he is with us.

7 PRESIDING JUDGE KORNER: [9:44:28] No. I can see him. He's not on that
8 screen, but I can see him on my screen.

9 MR LAUCCI: [9:44:34](Interpretation) Very well, and thank you for giving him
10 leave not to be physically present. It's more comfortable for him.

11 PRESIDING JUDGE KORNER: [9:44:45] Yes. And no doubt if he can't at any stage
12 hear what is being said, he will notify somebody.

13 Yes, this is the second status conference in this case and all parties, I hope, have seen
14 the agenda.

15 Can we start then with the first item, which is an update on the situation in Sudan
16 and the Court's activities.

17 And I invite the Registry to give us such an update.

18 MR MAHR: [9:45:16] Thank you very much, Madam President.

19 Since our last status conference, there's been a significant development in the sense of
20 a coup d'état, which had taken place in the early morning of 25 October, wherein the
21 military arrested Prime Minister Abdalla Hamdok and other members of the civilian
22 government and dissolved the transitional government.

23 A direct impact of this development has been that the Court has lost its channel of
24 communication in the form of the minister of justice who was also dismissed.

25 Active negotiations currently -- are currently taking place in Khartoum with the

1 involvement of foreign governments, regional actors and the UN to forge a new
2 governing structure for the country.

3 We, like the rest of the world, are eagerly awaiting for this process to be completed, at
4 which point our first priority would be to initiate dialogue with the newly designated
5 channel of communication with the Court, which may be the newly appointed
6 minister of justice.

7 We hope that this dialogue will allow us to very promptly resume cooperation with
8 the Sudanese authorities and facilitate the activities of the Court on the ground in the
9 implementation of our requests for cooperation.

10 In the meantime, for the time being, all missions for the Court to Sudan have been
11 suspended. There's nothing in terms of what has transpired since the coup that has
12 given us reason to believe that the ICC has been targeted or singled out in any way.

13 In this way, our operations have currently been affected just like any other
14 organisation and governments with existing operations in Sudan.

15 Very briefly, to discuss the next steps, we anticipate General Burhan's public
16 statement of 25 October confirmed full commitment to all agreements and
17 international covenants that were signed during the period of the transitional
18 government. There's no indications so far that the cooperation agreements signed
19 between the ICC and Sudan dated the 10 May of this year would be treated any
20 differently.

21 Having said that, we hope to obtain at the earliest possible opportunity confirmation
22 that a newly constituted Sudanese government will fully honour its statutory
23 obligations, so that we can essentially pick up where we left off.

24 For this to happen, we first need to await the appointment of the new government
25 and the designation of a new channel of communication with the Court.

1 Now, once that takes place, we will reach out to the newly designated channels of
2 communication. We will then secure official confirmation that the Sudanese
3 government is bound by the cooperation agreements it has signed with the ICC.
4 The Court's security experts continue to monitor the security situation in Sudan very
5 closely. Travel to and other related operations in Sudan will resume once we have
6 confirmation of the continued validity of the cooperation agreements and the Court's
7 security experts observe an improvement in the security situation to the extent that
8 the Court can resume its activities in Sudan.

9 As a practical matter, we would also need regular international and local flights to
10 resume in order to enable us to continue with our activities. With our UN partners
11 remaining operational on the ground, we anticipate that the lead-in time for
12 operations to support any activities on the ground will be -- we would be able to
13 bring it back online, and the lead-in time should, as a result, be minimal.

14 Finally, your Honours, just to add that this is not the first time that the Court has
15 faced a situation - where either as a result of a coup d'état or a serious security
16 disturbance - that has required us to temporarily suspend our operations and/or
17 mission travel.

18 It is on this basis that we would be following the measures that have just been
19 outlined before we resume our activities on the ground.

20 Thank you very much.

21 PRESIDING JUDGE KORNER: [9:50:08] Yes. Thank you.

22 So in a nutshell, at the moment, it is not possible obviously for anyone to travel to the
23 Sudan in order to conduct any kind of investigations?

24 MR MAHR: [9:50:22] That is correct, your Honour.

25 PRESIDING JUDGE KORNER: [9:50:24] Yes, thank you.

1 Yes, well, first of all, Mr Laucci, is there anything that you want to ask the Registry
2 about the situation?

3 MR LAUCCI: [9:50:36](Speaks English) I think the -- pardon.

4 (Interpretation) I'm sorry. I think that the description of the situation as set out is as
5 clear as it could possibly be. The comments of the Defence are not in reaction to the
6 description of the situation but, rather, the future, the extent to which it could be
7 envisaged that we -- we uptake activities in the Sudan. That's a point I'll come back
8 to which our distinguished Registry representative said that they could start again
9 once we returned to the previous situation -- or something like it, at least.

10 The position of the Defence is that that is absolutely not sufficient, just to go back to
11 the previous situation, given the fact that the problems still haven't been resolved, but
12 that's something that we can talk about later. Unless you wish to hear us on those
13 points immediately?

14 PRESIDING JUDGE KORNER: [9:51:50] Now at the moment, all I want to know is,
15 if there's anything else you want the Registry -- to ask the Registry, and the answer is
16 no?

17 MR LAUCCI: [9:51:57](Interpretation) No additional questions as to the situation in
18 Sudan. Thank you very much.

19 PRESIDING JUDGE KORNER: [9:52:03] Thank you.

20 Mr Nicholls, anybody from -- do you or anybody else want to ask any questions?

21 MR NICHOLLS: [9:52:10] No. No questions, your Honour.

22 PRESIDING JUDGE KORNER: [9:52:14] Thank you. And finally, Ms Von
23 Wistinghausen, anything?

24 MS VON WISTINGHAUSEN: [09:52:26] Same here. Thank you. No questions.

25 PRESIDING JUDGE KORNER: [9:52:28] Yes. Thank you all very much. Then -- I

1 don't think then there's any necessity for the Registry to remain, but we're very
2 grateful for the update.

3 MR LAUCCI: [9:52:34](Interpretation) Your Honour, I thought that we weren't
4 going to close this chapter so immediately, but indeed on this particular point of the
5 agenda, the Defence would like to make certain additional comments and
6 observations.

7 In our written submissions, there is one aspect which we've continually left
8 aside expecting the audience, in accordance with the Chamber's instructions to have
9 primacy of the orality of proceedings, and that is for discussions on what the
10 condition -- minimal conditions could be. And, at the time, we were talking about
11 a continuation. Now, you have to say, a restart of the Court's activities in Sudan.
12 This discussion is necessary I believe, and it has to take place. It's up to you to
13 decide whether this is the time today or whether it should take place in another
14 context or in written submissions. Of course we can make written submissions,
15 should you wish, but this is a point that we have retained for this hearing.

16 PRESIDING JUDGE KORNER: [9:53:38] Mr Laucci, I'm well aware that you've
17 done -- made various filings in respect of the agreement and the conditions in the
18 Sudan. I've read those, and they're very full submissions. But I'm not sure that at
19 this stage, there's much point in entering into any discussions about what you
20 consider to be to the minimum because at the moment, it's quite clear nobody can go
21 there.

22 So until such time as the Registry let all parties know that in their view, conditions
23 have changed to the extent that it is possible for there to be travel to and
24 investigations taking place in the Sudan, is there any point in discussing this in the
25 abstract?

1 MR LAUCCI: [9:54:49](Interpretation) It's up to you to tell us, your Honour. Those
2 discussions just has to take place, and, if we don't have it today, then I would
3 appreciate receiving the guidelines of the Chamber, if it wishes to receive the written
4 submissions on the minimal conditions or whether it would like to have another
5 hearing thereon.

6 PRESIDING JUDGE KORNER: [9:55:15] At the end of today's session, I am going to
7 float, if I can put it that way, the dates when I think the next status conference should
8 take place, which will be early in the new year. And I think we will have a better
9 idea then of what is possible and what is not possible. So for the moment, Mr Laucci,
10 I think we may as well leave it. Right, yes, Mr Nicholls?

11 MR NICHOLLS: [9:55:49] Your Honour, I didn't have any questions for the Registry,
12 which I thought that the explanation was quite clear. I do have a couple of points I
13 would like to make to supplement. They will be brief and in private session, please.

14 PRESIDING JUDGE KORNER: [9:56:05] Yes. Well, I think, Mr Nicholls, you did
15 notify the parties that you -- so I think if there are matters you want to raise, and it's
16 obviously sensitive, so we will go into private session, please.

17 MR NICHOLLS: [9:56:18] Thank you, your Honour. I think ...
18 (Private session at 9.56 a.m.)

19 THE COURT OFFICER: [9:56:25] We are in private session, Madam President.

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7 (Open session at 10.02 a.m.)

8 THE COURT OFFICER: [10:02:00] We are back in open session, Madam President.

9 PRESIDING JUDGE KORNER: [10:02:04] Yes, well, then can we move to the next
10 item on the agenda, which is the victims' participation and the mode of participation
11 as it were.

12 Mr Laucci, we have all had and read very carefully your filing on this matter, which
13 effectively, if I can summarise it, you submit that the Chamber should reject all the
14 victims' participation forms that do not have a signature, other than an electronic one,
15 and that you also challenge the -- what, in shorthand, has been called the "ABC
16 Approach" to the selection of victims.

17 We've had a response from the victims' representatives.

18 I don't believe we've had one from the Prosecution.

19 Mr Nicholls, is there anything you want to say on the topic?

20 MR NICHOLLS: [10:03:26] No, your Honour, other than we had -- sorry. We've
21 previously made submissions on the ABC issue on 26 November 2020 in our response,
22 and we stick by those. It's not really our issue, but generally it seems to make sense
23 to us.

24 PRESIDING JUDGE KORNER: [10:03:49] Yes.

25 Right. Now, Mr Laucci, is there anything that you want to add in to what is a very

1 full submission?

2 Of course since the last occasion, the case of Said, Abdel Kani - the decision was given
3 by the Appeals Chamber - and you say effectively, I think, that we should distinguish
4 that and say that we should not apply -- because of the number of victims, we
5 shouldn't apply the ABC -- or the Registry shouldn't.

6 Is anything you want to add to what you've already said?

7 MR LAUCCI: [10:04:36](Interpretation) Not really an addition. The summary of
8 our submissions on this point is entirely correct. As for the signature of the form,
9 well, the submission doesn't really have to do so much with the absence of signatures,
10 but rather it has to do with the use of a form that has not been approved by the
11 Presidency, even though it must be approved, and that does not require the signature
12 of those making the application.

13 The main point is that the absence of a signature contradicts all the rules relating to
14 authentication of documents before the Court. I won't reiterate that point.

15 As for the ABC Approach and the Appeals Chamber's decision on the Said case, the
16 criteria that were set out by the Appeals Chamber to allow for what is an exception to
17 89, Rule 89, which has to do with the... The ABC Approach in any event, is an
18 exception.

19 The Appeals Chamber has said that it is possible as long as it does not do prejudice to
20 the case. The number of victims is something to consider, as the Appeals Chamber
21 has said, and given the numbers we currently have, I think we are really dealing with
22 such a situation. An exception to the ABC Approach is not necessary. We have the
23 Legal Representatives of Victims' team. They are present, and we hope that their
24 problem with legal aid will be solved soon. And I believe they can assist the
25 Registry with all the redactions needed.

1 There are other facts special to this case. We deplore the fact that during the
2 confirmation of charges hearing, the red line was breached with the submission of
3 some items of evidence, and I think we need to -- well, to support evidence, the
4 Prosecution made use of things that the victims told their representatives to provide
5 some sort of basis to the Prosecution's arguments. So I think really the red -- they
6 have gone beyond the red line, and the Defence should have access to such
7 information.

8 Another special point about this case is that the previous LRV, Ms Clooney, has now
9 joined the Prosecution office. This is a case that really -- all there is -- the only parties
10 that don't have access to the victims' forms is the Defence, and that is quite unfair.
11 And I refer back to my previous filings in this regard, and I thank you.

12 PRESIDING JUDGE KORNER: [10:08:22] Thank you.

13 Ms von Wistinghausen, do you want to say anything else other than what you've
14 already said?

15 MS VON WISTINGHAUSEN: [10:08:33] Yes, your Honour. You may also want to
16 hear from the Registry, but just a few comments to what my colleague has just said.

17 I mean, as you know, we've made - I wouldn't say "extensive" - but some submissions
18 with regards to the Defence's application, and I don't want to repeat that. I have
19 nothing further to add. And I've heard from my colleagues from the Defence.

20 It seems to me that there is a tendency to re-discuss issues that have already been
21 extensively discussed in the pre-trial phase and decisions had already been taken, and,
22 in my view, there hasn't been any real change in circumstances.

23 But just a few comments still.

24 Not to allow the forms that have not been signed or some printed could clearly or, in
25 my view, not advance the proceedings. On the contrary, it could frustrate or

1 substantially delay the ongoing efforts of collecting and processing victims'
2 applications in time.

3 We know that the situation is as it is at the moment in Sudan, but it is to be
4 expected - this is what I heard from the VPRS and also my focal points in Sudan - that
5 there are quite a substantive number of more victims who would like to participate in
6 the proceedings or at least fill in the application forms and then go through the
7 procedure. So that's certainly an aspect. And given the situation of most victims
8 who live in refugee camps and under very poor conditions, I think there needs to be
9 some flexibility.

10 Of course you know in an ideal world, every application would have a signature or at
11 least a thumbprint, but you really have to take into consideration the circumstances of
12 the country we are talking about and the situation of the people there, and the
13 hurdles shouldn't be too high.

14 And there is a solemn declaration in this victims' participation form and there is
15 a necessity to have an idea or something similar as approved. So it's not as if there
16 was nothing to prove the identity of the victim.

17 As you said, in the meantime, since the Pre-Trial Chamber decision, the
18 Appeals Chamber has decided in the Kani case. So I think, you know, I mean, it has
19 clearly set out the ABC Approach is an acceptable one. It has been used in other
20 cases. It may depend on the specific situation and the specific case, but I don't see
21 why it shouldn't be applied here.

22 I can also explain that it is to be accepted -- expected that a considerable number of
23 victims still want to participate in the proceedings. I've already said that. And
24 given the current circumstances, I just want to put on the record that I urge the Trial
25 Chamber to allow victims to submit victims' application forms until the end of the

1 proceedings.

2 I know that the Trial Chamber has taken the position -- or some Trial Chambers have
3 taken the position at the end of the Prosecution case is the appropriate deadline to do
4 so. But, again, given the circumstances and the level of insecurity, when it will be
5 possible to meet and speak with victims, I consider that a different and more
6 generous approach should be taken in this case and I really wanted to flag that today.

7 And lastly - and maybe this is a point that hasn't been discussed very much - I don't
8 agree with the Defence that the ABC Approach affects the rights of the accused as the
9 victims' applications are not evidence. And this has been clearly stated by the
10 Pre-Trial Chamber in its first decision establishing the principle applicable to victims.

11 And maybe I can quote from that decision of 18 January 2021, it says:

12 "The factual statements made by the applicants in the application forms do not
13 constitute evidence, neither against nor in favour of the accused and cannot be relied
14 upon outside of the limited scope of the admission process."

15 So the sole purpose of the victim application process is to determine which persons
16 are entitled to be represented as victims in the confirmation proceedings and should
17 victims wish to present their views and concerns, so then the Defence --

18 PRESIDING JUDGE KORNER: [10:12:58] Slow down, please.

19 MS VON WISTINGHAUSEN: [10:12:59] Pardon to the interpreters. Then, of
20 course, the Defence should be provided - and I completely agree with that, and this is
21 what the rule said - with a copy of their application.

22 So the Defence, in my view, is not unduly prejudiced by not receiving all individual
23 applications. And the purpose of these forms is really to assist in the determination
24 of the substantive issues and criminal charges in the case, and admitting application
25 forms as evidence may also be perceived actually by the victims themselves as an

1 unfair use of documentation that was provided to the Court for a discrete purpose
2 and not as something comparable to a witness statement.

3 And maybe lastly, in any event, all of this, in my view, is not that much of relevance
4 as it seems on the face of it because of the 151 victims that are currently participating,
5 only a very few relate to victims with a dual status, in which case the forms will of
6 course be disclosed to the Defence.

7 So all the other victims' application forms cannot be used for any findings regarding
8 the individual criminal responsibility of the accused. Thank you.

9 PRESIDING JUDGE KORNER: [10:14:20] Yes. I don't know.

10 Do the Registry want to say anything on this matter?

11 Yes, Mr Ambach.

12 MR AMBACH: [10:14:36] Very briefly, your Honour. Thank you very much for
13 giving me the floor and for giving me time to arrange myself.

14 Well, I think a lot has been said, so I shall be brief.

15 I believe that indeed, as has already been said -- much to the question of the victim
16 participation form has already been said in writing, at pretrial, and also right now,
17 including also the question whether there is a Presidency approval required for every
18 form in use or whether there is a discretion of the Chamber to make case-specific
19 arrangements or amendments, as has been the Registry submission, when requesting
20 the solemn undertaking in the form to replace the physical signature.

21 Now, to that point, a quick note.

22 The reason why the Registry appealed to the Pre-Trial Chamber at the time and why
23 it would submit the same to the Chamber today is the same in that previously, the
24 Registry has been using physical paper forms where a signature of the victim was
25 required.

1 Yet, as we've discussed, the circumstances of the current case are such that the use of
2 paper material in and of itself is extremely risky in the field. The mere existence of
3 a form in the hands of the bearer puts the same at risk.
4 Furthermore, we have to consider that large distances may have to be made by
5 persons carrying these forms in order to then get to a scanning or printing facility
6 which are, as we know, also difficult to come by.
7 Therefore, for us, the use of an electronic means to receive and pass on such
8 information to the ICC without leaving a paper trace is a necessity.
9 Obviously, also the COVID situation makes such a solution, which doesn't require
10 such physical contact, another point to consider.
11 Now, the security situation, as we've already said, and the infrastructure of victims in
12 the relevant areas have, if anything, deteriorated which thereby, in our submission,
13 would make our submission at the time of pretrial all the more valid today.
14 As to the legality of the absence of a physical signature, I refer to the submissions that
15 were made at pretrial, which I think are valid here today as well.
16 Finally, I just recall that it is the jurisprudence of the Court that victims can submit
17 their applications in any which way they please. So, for instance, arguably, also an
18 audio file or a video file submitted by a victim would be entertained. Now, these
19 would not bear a signature either.
20 And as a last point, the Legal Representative of Victims will be in contact with her
21 clients, and that, I think, is a very powerful safeguard that in terms of the authorship
22 of whichever form has been received by the Registry electronically is being verified.
23 A quick word to the ABC Approach, again here, I will not dwell on the submissions
24 made as well as the findings of the Appeals Chamber in the Said case, suffice to say
25 that it was held to be in principle an adequate tool to ensure the fairness and

1 expeditiousness of proceedings while at the same time respecting the rights of both
2 the accused and the victims.

3 The question here is, what is victims' applications to be -- remain low in numbers?

4 And here, I just wanted to submit that right now, we're looking at 151 victims that
5 have been admitted at the pretrial stage. Further applications have been submitted
6 to the Registry and will be brought to the Chamber's attention in due course.

7 The confirmed charges in this case lead us to surmise that the number of potential
8 victims affected by the alleged crimes are likely to be in the thousands. I'm just
9 reminded of the charge of intentionally directing attacks against the civilian
10 population and forcible transfer only for Kodoom and Bindisi and other incidents.
11 Here, I refer to our Registry submission of 1 September '21 where we also outlined
12 that.

13 In light of the current situation in Sudan and Chad, the Registry estimates that it
14 would be able to collect and receive between 600 to 800 additional victim applications
15 in the course of the first semester of 2022, all that in keeping -- keeping in mind the
16 current situation as it has already been discussed. Should the Registry and others be
17 in a position to conduct activities in situ in Sudan in the first semester of 2022, it is
18 anticipated that the estimate could increase substantially and this would lead us to
19 numbers of participating victims comparable to the cases currently at trial.

20 Thank you very much, Your Honour.

21 PRESIDING JUDGE KORNER: [10:21:00] Mr Ambach, there's one thing actually. I
22 think part of the Defence submission is that the Registry has failed to comply with the
23 rules of confidentiality in respect of the victims' applications.

24 Do you want to say anything about that?

25 MR AMBACH: [10:21:22] Thank you very much, your Honour.

1 My submission would be that we apply the same standards and caution that we have
2 applied in previous cases, that is, a maximum of confidentiality. A maximum of
3 confidentiality also of means of communication, so the way -- how we communicate
4 with any actors on the ground be that electronically, be that physically, we do apply
5 the regular standards for such activities.

6 In terms of the confidentiality of the documentation collected, we again are applying
7 utmost confidentiality in that the documents -- the way of receipt of these documents
8 is through secure channels and remains secured by the Registry.

9 We also apply numerous and repeated trainings to anybody who is engaging with us,
10 intermediaries, to apply the very same standards.

11 So I would submit, your Honour, that we are doing our due diligence as we do in
12 other cases.

13 PRESIDING JUDGE KORNER: [10:22:45] Yes, thank you very much, Mr Ambach.

14 Mr Laucci, there is one other matter that I ought to come back to you on because you
15 mentioned it.

16 You say that the appointment of Ms Clooney -- as the former representative of the
17 victims, the legal representative -- as a special one of the 22 or 23 Special Advisers to
18 the Prosecutor in this case violates your client's right to a fair trial.

19 How?

20 MR LAUCCI: [10:23:25](Interpretation) Quite simply, your Honour, because on
21 behalf of these 22 or whatever Special Advisers appointed by the Prosecutor, Ms
22 Clooney is the Special Adviser responsible for providing him with advice on Darfur.
23 And thus, all the information that she received as the Legal Representative of
24 Victims - the participation forms, all communications with the victims - are now
25 provided to the OTP, even though the Defence does not have access to this

1 information.

2 Have I answered your question? I have other points I can also raise.

3 PRESIDING JUDGE KORNER: [10:24:11] Before you move on, sorry, Mr Laucci, on
4 what basis do you assert that Ms Clooney has breached all her professional
5 responsibilities as to confidentiality and informed the Office of the Prosecutor of all
6 the information she received as a result of being the Legal Representative for the
7 Victims?

8 MR LAUCCI: [10:24:33](Interpretation) There is no suggestion on my part. My
9 submission is merely that Ms Clooney does have that information and Ms Clooney is
10 now within the OTP. So someone inside the OTP does have that information.

11 PRESIDING JUDGE KORNER: [10:24:56] You say you are not asserting that Ms
12 Clooney gave the information, but you say that somebody has it?

13 MR LAUCCI: [10:25:05](Interpretation) Yes, Madam Clooney.

14 PRESIDING JUDGE KORNER: [10:25:08] But Madam Clooney is not within the OTP.
15 She's been appointed as Special Adviser to the OTP. And what you would have to
16 be suggesting in order to even begin to mount an argument is that she has improperly
17 and in breach of all her professional obligations passed on information that she
18 gained through when she was counsel for the victims.

19 MR LAUCCI: [10:25:45](Interpretation) I thank you, your Honour, for allowing me
20 to make the clarification. We have no reason to believe that there has been any such
21 thing on the part of Ms Clooney, no indication of such a thing.

22 But given this special status that Ms Clooney now has within the OTP, I'm not
23 entirely aware of the exact nature of being a Special Adviser to the Prosecutor, but in
24 one way or another, she is attached to the office, and her area of competence is
25 Darfur.

1 I do wish to reiterate that she did have access to all the victims' participation forms.
2 She is now within the OTP. There is no accusation whatsoever that confidentiality
3 has been breached (sic) but I -- it is merely a description that I have provided.
4 MS VON WISTINGHAUSEN: [10:27:02](Interpretation) I shall respond in French.
5 And given that there has been no -- given that there has been no -- there has been no
6 suggestion of anything, so I think this is an entirely phantom discussion. Ms
7 Clooney is bound by the code of conduct as we all are. She has her confidentiality
8 requirements as we all do, as you do. There has been no suggestion that
9 confidentiality has been breached.
10 She was named as Special Adviser, and that would not have been the case if there had
11 been any sign whatsoever of a conflict of interest.
12 This is, I reiterate, an entirely phantom discussion. There has been no suggestions
13 made about (Overlapping speakers)
14 PRESIDING JUDGE KORNER: [10:28:07] All right, well, I think we've done -- we've
15 done that topic.
16 (Microphone not activated)
17 MR NICHOLLS: [10:28:11] Yeah. Thank you, your Honour. I've been kind of
18 holding back and was going to stand up very briefly.
19 There has been no breach of confidentiality. None of the nightmare situations that
20 you outlined have taken place. And they won't. Nothing, nothing - contrary to
21 what Mr Laucci has said about Ms Clooney's appointment as Special Adviser - has
22 changed our access, the team's access, to any forms.
23 Thank you.
24 PRESIDING JUDGE KORNER: [10:28:38] Yes. All right.
25 Mr Laucci, you said you wanted to mention one or two other aspects of this. I mean,

1 we've read your full submissions;

2 so is there anything new that you want to say?

3 MR LAUCCI: [10:28:52](Interpretation) Just a very quick response to the remarks
4 made by the Legal Representative of Victims and the Registry, but I'll be very brief.

5 PRESIDING JUDGE KORNER: [10:29:05] Yes. All right.

6 MR LAUCCI: [10:29:06](Interpretation) My first point has to do with the re-litigation,
7 the re-litigation of issues already dealt with at the pre-trial stage. Yes, those issues
8 were decided upon only for the purposes of the pretrial phase, but they haven't been
9 decided upon for the trial proceedings.

10 The Legal Representative of Victims has said that going back to the victims to ask
11 them to fill out a new participation form would be prejudicial to the speed of the
12 proceedings and would be difficult for the victims because this would mean further
13 contact with them and there is the possibility of further victimisation.

14 That is a fait accompli that, indeed, we announced and anticipated in our submissions
15 to the Pre-Trial Chamber. The Pre-Trial Chamber has accepted the irregular form,
16 and now there is a question of going back to the victims for a new form.

17 We were not listened to. This fait accompli should not keep us from submitting that
18 this form is and remains irregular.

19 As for the fact that the applications for participation by victims are not evidence, I
20 entirely agree. The Pre-Trial Chamber unfortunately did not play that game. At
21 page -- paragraph 57 on the confirmation of charges decision, they wrote that

22 Kushayb --

23 (Speaks English) "[...] meant to evoke strength and courage, as opposed to
24 a dangerous addiction, [...]"

25 (Interpretation) The only evidence of that is -- well, just going by the remarks made

1 by Paolina Massidda during the confirmation of charges hearing...

2 I agree with you. That should never have been entered into proof and was used to
3 confirm the charges against my client.

4 If I could now turn to the remarks made by my colleague from the Registry, I would
5 just remind him of 232 (sic) of the -- Registry: All standard forms intended for
6 proceedings before the Court must be approved -- or shall be approved, rather, by the
7 Presidency.

8 The modified form was not approved. And, as for the use of audio recordings to
9 make a -- for a form, that is provided for, but that is restricted to cases where a person
10 can, only because the person is illiterate or disabled may make such an application.

11 That is not the case here. All the victims, whether or not they are literate or not, are
12 supposed to submit the form without --

13 PRESIDING JUDGE KORNER: [10:32:52] I'm sorry, but Mr Laucci, you are
14 repeating what you have already said in your filing, and I think your difficulty on this
15 is that the Appeals Chamber have looked at it and - whether or not you say formally
16 the Presidency has approved this - the Appeals Chamber seems to think there's
17 nothing wrong with this.

18 So I think at the moment, you're on a slightly difficult wicket, if I can use a cricketing
19 analogy.

20 MR LAUCCI: [10:33:27](Interpretation) Thank you very much, your Honour. I
21 shall pay attention to that.

22 Now, the decision that you are referring to could possibly be the subject to a new
23 challenge from the Defence, if that is the interpretation thereof. But now concerning
24 the danger of paper forms and the need to scan et cetera, I understood that the new
25 forms were used on the basis of electronic media, and, in that case I do not see why,

1 given that it's used electronically - and that's admitted - I don't see why the Registry
2 in the Sudan cannot do what every DHL company does to my home when it delivers
3 something, which is to sign on the electronic form itself with your finger, but put
4 a signature on to identify that I did indeed receive the package in question. I think
5 that could be the case. It could be a solution which would satisfy everybody.

6 And finally and above all, the difficulty of returning to the victims to get access to
7 them, the Registry tells us that there are 6- to 800 applications -- this is a projection,
8 applications for participation during the first semester.

9 While the situation in Sudan is as it is and while the legal conditions are not met to
10 carry out activities, my colleague, I would ask you, please, stop immediately. You're
11 putting all of these people in danger by gathering information with regards to a
12 participation. We are in an environment (Overlapping speakers)

13 PRESIDING JUDGE KORNER: [10:35:24] I'm sorry, Mr Laucci. I appreciate this
14 one -- this is not a matter for you. It is not a matter for the Defence.

15 MR LAUCCI: [10:35:34](Interpretation) I was just referring to my filings. Please
16 excuse me.

17 And furthermore, a last point with regards to the confidentiality, in answer to your
18 question, the Registry has assured us on all the measures that it's taking in order to
19 ensure confidentiality for applications.

20 There's just one cornerstone that's missing, and this is what's going to make it collapse,
21 and that is that the applications for participation are not marked as confidential.

22 This is a violation of the instruction -- the administrative instruction on the policy of
23 the protection of information of the Court, Administrative Instruction 2007/001. And
24 you can take any protective measures with regards to confidentiality. Documents
25 which aren't identified as confidential, then you won't resolve the problem of

1 confidentiality, and, furthermore, you would violate the applicable text of the Court.

2 PRESIDING JUDGE KORNER: [10:36:41] Yes. Thank you, Mr Laucci. All right.

3 On this issue, we are going to give a ruling after the break this afternoon because I

4 think it's important that all parties know about that. So we'll give an oral ruling.

5 Can we move then to the next item, which is the question of trial witnesses.

6 Mr Nicholls, we note that you've added a further 14 witnesses to your list.

7 MR NICHOLLS: [10:37:18] Excuse me, your Honour. My colleague,

8 Mr Sachithanandan, will address this item on the agenda.

9 PRESIDING JUDGE KORNER: [10:37:23] Yes, very well. Thank you.

10 MR SACHITHANANDAN: [10:37:26] Yes, your Honour.

11 PRESIDING JUDGE KORNER: [10:37:29] Yes.

12 MR SACHITHANANDAN: [10:37:30] I'm happy to provide a brief description of

13 what's changed or would you like me to address --

14 PRESIDING JUDGE KORNER: [10:37:38] No, well, I think really what I want -- we

15 note you've done this. All I would like to know is -- we would -- sorry, we would

16 like to know is whether you could possibly provide us with a provisional list of your

17 witnesses earlier than I think we originally ordered, but say by the -- because I think

18 you've got to give us the full list by January.

19 Would it be possible before the break, so by 15 December, to have a provisional list

20 provided both to us and the Defence obviously?

21 MR SACHITHANANDAN: [10:38:15] A provisional list should be possible,

22 your Honour. As you can imagine, we are struggling because of recent events. I'll

23 add that we also had a chat with the Defence about the first 10 witnesses, and we

24 were aiming to provide that by the end of next week. But in light of your Honour's

25 request, we'll also aim to work on the provisional list.

1 PRESIDING JUDGE KORNER: [10:38:38] I think it would help all parties if we had
2 some idea before, as I say, the break of what the provisional list was.

3 So thank you very much.

4 Yes, Mr Laucci, do you want to say something about this?

5 MR LAUCCI: [10:38:57](Interpretation) Just very briefly, and just to reflect
6 a proposal, which was the very proposal that was explored during our inter partes
7 discussion on this point, which my distinguished colleague from the Prosecutor
8 mentioned that they were committed to communicating in the next weeks, the list of
9 the first 10 witnesses, that's only possible because we have mutually come to an
10 agreement that this list is the wish list, as it were, and that nobody, including the
11 Office of the Prosecutor, can be bound by it because it depends on so many other
12 factors, which we've already discussed this morning, that we take it as a wish list.
13 So where it concerns the instructions of 15 December, I think the wish list would
14 already be very appreciated. We can't ask people to predict the future.

15 PRESIDING JUDGE KORNER: [10:39:58] We are most reassured to hear that the
16 discussions are going on between the parties with a view to assisting the smooth
17 passage of this case.

18 Expert witnesses. I understand that there's been consultation between the parties on
19 this. Has there been any kind of agreement reached?

20 MR SACHITHANANDAN: [10:40:22] Yes, your Honour. We've had very fruitful
21 conversations with the Defence. We've identified one expert witness to -- who can
22 testify about the broader background of the conflict. We've shared the identity of the
23 expert with the Defence, and the Defence is -- is in agreement. So we are now -- we,
24 in fact, yesterday, we shared a draft letter of instruction with the Defence, and we're
25 working on it now.

1 PRESIDING JUDGE KORNER: [10:40:49] Again, we are very heartened to see that
2 because obviously if you can come to an agreement on who it will -- the Chamber, I
3 should add, interrupting my sentence, I should add the Chamber feels very strongly
4 that they would want to hear from somebody about the background to this conflict.
5 So possibly, as I think I suggested last time, starting with that witness, that would be
6 a great help.

7 MR SACHITHANANDAN: [10:41:23] Absolutely. And we're on the same page,
8 and the expert will certainly testify very early in the proceedings.

9 PRESIDING JUDGE KORNER: [10:41:30] Yes. Yes, thank you very much. Well,
10 it's very helpful again.

11 Right. The applications pursuant to Rule 68.

12 I think there was -- you are applying to extend the deadline, is that right?

13 Mr Laucci, sorry.

14 MR LAUCCI: [10:41:58](Interpretation) It was still about the previous point,
15 your Honour. I was just intervening to confirm the excellent understanding that
16 there's been between the OTP and the Defence on the designation of this expert.

17 This is a name that we all have in mind, and we are very pleased. I understand that
18 the Office of the Prosecutor doesn't want to give the name immediately; so I'm not
19 going to say it now.

20 Very well. But we are indeed going to participate actively in the definition of
21 instructions for this expert, which will be a joint expert -- on the context, that is.

22 PRESIDING JUDGE KORNER: [10:42:40] I suppose actually technically, I
23 also -- before we move back to the Rule 68, Ms Wistinghausen, is there anything you
24 want to say about this? I don't imagine there is really, is there?

25 MS VON WISTINGHAUSEN: [10:42:56] Yes. Thank you, Madam President. I

1 mean, I wasn't implicated for obvious reasons in the discussions that have taken place.
2 But I'm quite sure that, if both parties agree, I'm not going to be the one who's -- who
3 will disagree, and I don't even know if that will make any difference. So as to the
4 expert witness, I'm completely fine with whoever it's going to be.

5 PRESIDING JUDGE KORNER: [10:43:11] Right.

6 MS VON WISTINGHAUSEN: [10:43:11] And I just want to put on the record that
7 the former LRVs had already indicated that they may request leave to call witnesses
8 in the course of the proceedings or to have victims appear in person to present their
9 views and concerns. But at this stage, it's much too early for me to say anything in
10 particular with regards to that.

11 And as to the procedures to be followed, I just want to be sure that my understanding
12 is correct, which is that, that we -- or that the Legal Representatives in the past have
13 always been instructed to file a written request towards the expected end of the
14 Prosecution case, and, if that is the approach the Trial Chamber wants us to take, this
15 is what we are going to do. So I don't think (Overlapping speakers)

16 PRESIDING JUDGE KORNER: [10:43:57] No. I was going to say, we are proposing
17 that there will be a much longer status conference, as I say, fairly early in the new
18 year, so we can go through all these matters at that stage, and we'll give advance
19 notice.

20 Yes, thank you.

21 Yes, now, sorry, we had moved on to Rule 68 witnesses. Witnesses: Applications
22 pursuant to Rule 68.

23 You're asking for an extension, I gather, the OTP?

24 MR SACHITHANANDAN: [10:44:28] Yes, your Honour. In the meanwhile, since
25 the last status conference, we've added to the Rule 68 list. And currently, we have 84,

1 and we are genuinely struggling to provide a Rule 68 request for all 84 by 5 January.
2 We've again discussed this with the Defence, and the Defence has said that they do
3 not object to a delay till 3 February. The idea is not to saddle the Defence with
4 everything on the last day, but we'll start -- we could start rolling applications starting
5 before 5 January, with the last request by 3 February, and we would be very grateful
6 if the Chamber could allow this request.

7 PRESIDING JUDGE KORNER: [10:45:18] Mr Laucci, I gather again, very properly,
8 you're not raising an objection to the extension.

9 MR LAUCCI: [10:45:23](Interpretation) I confirm everything that my colleague's just
10 said.

11 PRESIDING JUDGE KORNER: [10:45:27] Thank you.

12 I think if you could indicate when there are filings, what's agreed and so that we don't
13 have to trouble about whether we have to rule on it. So when you do file, indicate
14 whether the Defence accept or not.

15 Thank you very much.

16 MR SACHITHANANDAN: [10:45:47] Very well, your Honour. And we'd really
17 like to thank the Defence for their cooperative attitude on this.

18 PRESIDING JUDGE KORNER: [10:45:53] Yes. The protocol relating to contacting
19 with witnesses. Can I say straightaway, we are still considering that. We will issue
20 a protocol. It's hoped, again, that there will be a standardised one that will go
21 across -- which will go into the Chamber's manual. I think there is something there
22 already. But various Chambers seemed to have taken slightly different courses; so
23 we're trying to decide which will be the best.

24 Again, that's something we will obviously rule upon or provide to the parties as soon
25 as we've made the decision. So I don't think there's anything else we can say about

1 that.

2 Right. Trial preparation, can we move on to.

3 MS VON WISTINGHAUSEN: [10:46:48] Excuse me, Madam President?

4 PRESIDING JUDGE KORNER: [10:46:51] Yes?

5 MS VON WISTINGHAUSEN: [10:46:51] Regarding the protocol you've just been
6 talking about, which has also been discussed at the first status conference, if I'm well
7 informed, and we take the same position. But it had been raised at the time by my
8 colleagues, and I completely agree with that.

9 It would make sense to think about a protocol on dual-status individuals as well, as it
10 has been implemented in other cases before this Court, because we really think that
11 these protocols reflect the efforts of various Chambers to create a uniform practice,
12 and I'm sure this is also in the interests of the Trial Chamber and all of us in this very
13 specific case.

14 And also there is just one point I would like to raise with regards to the protocol on
15 contact with witnesses and victims by another party or participant because in all the
16 protocols that I read, I think there is one situation missing, which is what happens
17 when a party addresses a victim, not knowing that this victim may be a witness in the
18 case.

19 And I don't want to create - do you say that? Phantom discussions, as I just said, in
20 French, to Mr Laucci, but I think it's a very pragmatic and a real situation that can
21 occur and it would make sense to consider to take on this situation in a protocol
22 where you could, for example, say that every time you talk to somebody, you should,
23 as like a standard question, ask: Are you a victim participating in these proceedings?
24 Because the protocols address the situation of addressing a witness.

25 But as we know, most of the victims participating in this case are not witnesses, but

1 they are represented by counsel, by us. So it should be part of the procedure that if
2 a party wants to talk to a participating victim - and, of course, the parties cannot
3 know, having the ABC Approach, who all these participating victims are - I think it
4 should be considered in such a protocol that whenever you approach in the course of
5 your investigations, a person, you should ask that person: Are you a victim
6 participating in the proceedings against Mr Abd-Al-Rahman? And, if yes, this
7 person is represented by counsel.

8 So the parties should actually, just by way of complying with the code of conduct,
9 contact the Legal Representatives to ask to talk to that person. I don't know if I make
10 myself clear. But for me, this situation, which is a very realistic one, I think, is not
11 part of any of these protocols. And as far as I know, it has already been -- OPCV has
12 already advocated in the past for an additional protocol of this kind in the Katanga
13 and Ngudjolo case. And there is a decision on the arrangements for contact between
14 represented victims and the parties. It's a decision of 23 November 2010, and it's
15 addressed in paragraphs 29 and to 39, and I just want to, you know, to raise the Trial
16 Chamber's attention to this matter and, if necessary, I'm also happy to make some
17 written submissions on that

18 PRESIDING JUDGE KORNER: [10:51:14] Yes, I think I follow what you're saying.
19 I mean, I assumed at first that you were talking about persons who wanted to speak
20 to a victim outside the legal representative to find out whether they're a witness. But
21 of course, that's impossible because one of the many things they may not want to
22 reveal is that they are a witness.

23 But you're saying, as I understand it, if, for example, the Defence want to speak to
24 someone who is testifying for the Prosecution, they should also ask whether or not
25 they are a victim.

1 Is that what you are saying?

2 MS VON WISTINGHAUSEN: [10:51:55] Well, I'm saying, if, for example, the
3 Defence is doing investigations and naturally speaking to persons. So the protocol
4 only talks about this person being a witness in the case. But we have these hundreds
5 and more of participating victims who are also represented by counsel.

6 So just by way of complying with the code of conduct, I think that the party who
7 would address a person who is a victim would have to, at least, inform the legal
8 representative of that victim. And of course, it's a bit difficult in the situation where
9 the party may not know who all the victims participating in the proceedings are. So
10 the only way to approach this, I think, is to -- to have part of the protocol to follow
11 that any person you talk to, you first ask: Have you already been approached by
12 people? Are you a victim participating in these proceedings? And then you take it
13 from there.

14 PRESIDING JUDGE KORNER: [10:53:12] Yes, all right. I don't think any of us had
15 considered this at this stage. Could you possibly I think, Ms Von Wistinghausen,
16 put this into writing into a short -- citing the cases where you say this has happened,
17 and then we can have a look at that.

18 As I say, we haven't yet got round to issuing a protocol; so we'll take that into
19 consideration. It needn't be long.

20 MS VON WISTINGHAUSEN: [10:53:42] No, don't worry. I won't -- it's not very
21 complicated.

22 PRESIDING JUDGE KORNER: [10:53:44] No.

23 MS VON WISTINGHAUSEN: [10:53:45] I just wanted you to give it a thought, and I
24 know it's also being discussed in other cases. Thank you.

25 PRESIDING JUDGE KORNER: [10:53:50] Yes, all right. I think it would be helpful

1 anyhow for all the cases. Yes.

2 Mr Laucci, yes.

3 MR LAUCCI: [10:53:57](Interpretation) With your permission, your Honour, on this
4 particular issue, which should not have existed, but my colleague, Iain Edwards,
5 would like to speak.

6 PRESIDING JUDGE KORNER: [10:54:13] Yes, Mr Edwards.

7 Your mic isn't on.

8 MR EDWARDS: [10:54:25] Is that -- can I be heard?

9 PRESIDING JUDGE KORNER: [10:54:32] You can, yes.

10 MR EDWARDS: [10:54:33] Thank you. I was saying that of course we very much
11 welcome the efforts made by the Trial Chamber to pull together the different strands
12 relating to this protocol from that which is contained in the Chamber's manual and
13 practice it before other Trial Chambers.

14 Ms von Wistinghausen's suggestion is a sensible one.

15 An alternative approach would be for the Trial Chamber to circulate -- and I just put
16 this out as a suggestion that your Honour may think is sensible, that a draft protocol
17 be circulated amongst the parties and participants before it is crystallised into a final
18 protocol to allow for the parties and participants to make suggestions
19 and observations on the draft. We flagged this up as a possibility with regard to the
20 order on the conduct of proceedings and -- in the event the order was issued as it was,
21 but it's just a matter that the Trial Chamber may consider in respect of this protocol
22 because there are considerations that we are alive to, that the victims are alive to, that
23 it may be that the Trial Chamber is less alive to.

24 PRESIDING JUDGE KORNER: [10:56:20] Yes. Well, as I say, we'll consider this.

25 As I explained when we came to the question of the order on the conduct of

1 proceedings, we are, as a body of judges, attempting to get consistency and it is
2 therefore not something that we invite submissions on, normally. But I'll certainly
3 consider with my fellow judges what we're going to do on this occasion. So
4 thank you, Ms Edwards.

5 And we've taken Ms von Wistinghausen's point.

6 Right. Anything else on this issue? No.

7 Then the next is, Trial preparation: Agreed facts.

8 We are happy to see that there have been facts agreed between the parties. The
9 Legal Representatives of Victims have already said they've got nothing to say on the
10 ones that are so far agreed. And the -- I think there's been some later ones though.
11 So, Ms von Wistinghausen, if you want to make submissions on those, you can.

12 MS VON WISTINGHAUSEN: [10:57:47] I think we have filed a short
13 submission -- notification on, I think, 9 November indicating that the lists of agreed
14 facts identified in the annexes, in the third. Joint Prosecution and Defence
15 submissions on agreed facts do not negatively impact the interests of the victims --

16 PRESIDING JUDGE KORNER: [10:57:59](Overlapping speakers)

17 MS VON WISTINGHAUSEN: [10:57:59] -- we think why we don't need to be
18 included in the discussions amongst the parties, we consider that, you know, as long
19 as we have the possibility to have a look at these lists, and, you know, just if there are
20 any concerns from our side, we'll say it. And if not, you will always get this -- these
21 one or two sentences notifying you that we don't have an issue. Thank you.

22 PRESIDING JUDGE KORNER: [10:58:26] Yes, thank you. Obviously at some stage,
23 we'll rule on it. I take it that discussions are still going on between the parties. I see
24 nods from both sides. And can I again commend both sides for the proper spirit of
25 cooperation which this is proceeding. So unless there's anything else on that, as I say,

1 we'll issue a decision. I think we'll do it once everything is -- that can be agreed has
2 been agreed.

3 We then move to the trial brief.

4 The Prosecution have made a request to set a page limit of 200 pages. As you know,
5 my feelings on length of filings are that many of them are too long, but I note that the
6 Defence don't object, and it's probably better that we get as much information as we
7 can. And so we agree that the trial brief can be -- has a page limit of 200 pages.

8 And I understand that the request is that the Arabic translation may be delayed to 3
9 February. And I understand that there's no objection to that from Mr Laucci. No.
10 So we agree on that.

11 MR NICHOLLS: [11:00:04] Thank you, your Honour.

12 PRESIDING JUDGE KORNER: [11:00:06] Right.

13 Yes, then we come - and I think you've already dealt with this, Mr Laucci - your
14 question of the inadmissibility of witness -- oh, sorry, Ms Wistinghausen, yes?

15 MS VON WISTINGHAUSEN: [11:00:28] Excuse me, Madam President, me again,
16 but there was a trial brief by the victims' representatives has also been discussed in
17 the past, and I note that the proposition was made that the LRV's trial brief should be
18 filed on 7 February 2022.

19 So now, given that we know very well that a higher number of victims will possibly
20 apply to participate in the proceedings, I'm suggesting that I file my trial brief at
21 a later stage, at a date to be defined by your Honours, so that I can consult the views
22 and concerns of the majority of the victims because maybe those I'm representing at
23 the moment are not the majority of those that I may represent in the future. And, of
24 course, I could file it prior to an opening statement before the presentation of our
25 evidence, if any.

1 And so my proposition would be to file a trial brief a few days before my opening
2 statements, and I leave it to the Trial Chamber how many days that will be. I just
3 wanted to, yeah, to put in question if this date of 7 February 2022 can sensibly stand
4 for us at the moment because I'm there to present the views and concerns of my
5 clients, and I just can't say who they are going to be as of February, and how much I
6 will have the possibility actually to communicate with them.

7 Of course, the difficulties the Prosecution was explaining this morning apply to us as
8 well, and it starts with internet and telephone connection, which is just quasi
9 non-existing for those who are in the Sudan.

10 So I just wanted to put this on the record that maybe there should be some flexibility
11 there as well, please.

12 PRESIDING JUDGE KORNER: [11:02:29] I think what we will do is I'll discuss that
13 with my fellow judges over the break, and we'll give you an answer this afternoon
14 and a date.

15 Right. Just a moment.

16 Mr Laucci, your inadmissibility of the statements. Again, you have given us a very
17 full written submission on that, which we have got, and you have already referred to
18 it in your submissions on the victims' participation. I think what I'm going to do is
19 ask if either the Office of the Prosecutor or the victims' legal representatives want to
20 say anything in response now and then give you a chance.

21 So starting, Mr Nicholls, do you want to say anything in response to this?

22 MR NICHOLLS: [11:03:40] Thank you, your Honour. Yes, just very briefly. This
23 is another matter that has been previously litigated I believe about three times
24 previously. We would stand by our previous submissions, which we made on 22
25 January 2021 in response to an appeal by the Defence. And in a nutshell, all of the

1 statements are identified as confidential in the metadata.

2 There is no dispute between the parties that the Defence knows exactly when they are
3 getting confidential material. And they have in fact - and we believe it - and we're
4 very glad to hear that they are strictly complying with those confidentiality levels and
5 keeping these documents confidential because they know that they're confidential.

6 And that to that extent, this is a non-issue.

7 The Pre-Trial Chamber in a ruling on 21 May 2021, the Decision on Defence requests
8 and procedural challenges, at paragraph 41, called this identical argument
9 unsubstantiated. This, I think, is a motion by the Defence in this case that we did not
10 even respond to.

11 And in paragraph 43, the Chamber firmly rejected --

12 "the suggestion that it would be necessary to declare entire categories of evidence
13 inadmissible in bulk on the basis of speculations about possible risks of interference."

14 So our position is that that decision was correct, and ours is the same as it has been.

15 We are nowhere near 69(7) territory.

16 And just the last point is -- this has been raised again, and I will be discussing it in the
17 office as well, the whole issue of this administrative instruction from 2007; so we will
18 take a look at that again. But this is a consistent practice that so far has been
19 accepted. Thank you.

20 PRESIDING JUDGE KORNER: [11:06:08] Ms von Wistinghausen, do you want to
21 say anything?

22 MS VON WISTINGHAUSEN: [11:06:15] Yes, just very quickly. I mean this
23 question has been raised by the Defence before. It has been rejected by the Pre-Trial
24 Chamber, and as it relates to OTP material, we leave it to the Prosecution to address
25 the matter, and I'm not going further into that. Thank you.

1 PRESIDING JUDGE KORNER: [11:06:32] Yes.

2 Mr Laucci, do you want to add anything? As I say, it's very clear. As Mr Nicholls
3 said, this has all been gone through before. So it's a question of whether we, the
4 Trial Chamber, departs from what has already been ruled upon.

5 MR LAUCCI: [11:06:52](Interpretation) Thank you, your Honour.

6 What was already decided upon by the Pre-Trial Chamber for the exclusive
7 requirements of the pretrial stage, that --

8 (Speaks English) "[...] would be especially inapposite in the context of the
9 confirmation process, which is" largely "based on written statements [...]" et cetera.

10 (Interpretation) I'm quoting from paragraph 43 of decision 82 --

11 THE INTERPRETER: [11:07:20] Correction: 802.

12 MR LAUCCI: [11:07:21](Interpretation) The submissions were clear, and yet they
13 still are being twisted. The submission never was that the Defence ignores or is
14 unaware that witness statements are confidential. Never.

15 The submission is that there are core texts that relate to confidentiality within the
16 Court, and they require that confidential documents be marked as such. This is to be
17 found in the 2007 administrative instruction.

18 Now, the fact that this core text is not being respected, that is not a part of the
19 discussion. That has been acknowledged by the OTP. It was already regretted by
20 the Pre-Trial Chamber, but we are no longer there. The discussion has to do with
21 one specific point; namely, beyond this violation. Are we to provide evidence
22 of concrete interference to dismiss evidence that is contaminated because of this
23 violation, namely, this lack of marking of documents as confidential?

24 If the Pre-Trial Chamber -- if this Trial Chamber were to agree with the Pre-Trial
25 Chamber, evidence would be needed of a concrete case of interference. The rule that

1 protects confidentiality, Section 7 of the administrative instruction, would become
2 null and void, would no longer exist.

3 And, at the best, it would be a good practice but not obligatory; whereas, elsewhere,
4 not respecting such a rule would be a disciplinary offence.

5 So this would mean an incompatibility between the disciplinary nature of this rule
6 and, on the other side, for the most useful documents that require the greatest
7 precautions and protection, it would just be a good practice.

8 Therefore, I think this is a deformation of the submissions made by the Defence, and
9 it would be a good thing if - as domestic judges do in their respective systems - at the
10 International Criminal Court, we should take care to ensure that the rules of
11 confidentiality be respected. This is a very old discussion, and something has
12 always been missing in this debate, particularly from the OTP whose witness
13 statements are under discussion. I refer namely to a proposal: How can we in the
14 future resolve this particular problem?

15 My learned friend, Mr Nicholls, in all sincerity says, "Oh, I raised this issue
16 internally." And this is an instruction that the Gbagbo Chamber gave to the
17 Prosecution in 2017, and nothing has been done since. Suggestions have been
18 made -- proposals have been made in January 2020. If you don't mind, I will provide
19 a personal anecdote, but I'll be brief about it. In January 2020, I spoke to the Registry
20 and the Presidency. I provided a draft modified administrative instruction
21 regarding confidentiality that would have dealt with this problem for once and for all.
22 The projection was there. It was a pro bono suggestion, for example, the
23 jurisprudence database and others. The answer: We're working on it.

24 January 2020, nothing had been done, and the administrative instruction was not
25 amended. I will not explain all of this. The problems are on the table. We know

1 that they affect all of the Prosecution's evidence, and there is no goodwill being
2 shown here in this regard. And it is up to you to decide.

3 I really have nothing further to say.

4 PRESIDING JUDGE KORNER: [11:12:36] Mr Laucci, I want to make sure that we all
5 understand your position. Your position is this, that because the statements are not
6 marked "Confidential" - though everybody treats them, including the Defence and the
7 OTP, as though they were confidential - we therefore should declare all of the
8 evidence contained within the witness statements as inadmissible, if, for no other
9 reason, than to make sure that the technicalities of stamping "Confidential" on
10 a witness statement are complied with.

11 That's your position, is it?

12 MR LAUCCI: [11:13:31](Interpretation) Let us consider the procedure for producing
13 this evidence. At the beginning, there is an interview between the OTP and the
14 witness. The interview may occur in various places -- various countries. For
15 example, the Sudan, which increases the risk, considering the lack of a legal
16 framework, or in other countries. And then the statement is produced, put on paper,
17 read back to the witness, and then it goes into the various cogs of the Court and will
18 end up in Ringtail where it is completely safe.

19 By the time it gets to the Defence, it is quite safe, and that's a good thing. We are
20 bound by our rules of confidence -- confidentiality. So the -- the statement is
21 confidential. That is fine. That is clear.

22 But the vulnerable point in time is not when the statement goes into Ringtail or other
23 systems. The vulnerable moment is when the document has been produced in the
24 field in a country. For example, the Sudan, there is a hard copy, there's an electronic
25 version, and it has not been marked "Confidential". And thus, people may come

1 across the information innocently or not innocently.

2 So these -- an innocent person who finds such a document and -- might say, "Oh, well,

3 this is not a confidential document. I'll throw it into the bin, or I'll do something else

4 with it." But in my submissions in the Gbagbo case, I made reference to what I was

5 told by a witness I was assisting. That witness said - that was in the Bosco Ntaganda

6 case, actually - apparently witness statements, confidential statements from the OTP,

7 were being sold in the Bunia marketplace openly.

8 And is there some sort of ill-intent when such documents are being offered on the

9 market in Bunia town? Not necessarily, but the documents are not marked

10 "Confidential", and thus a person who doesn't know anything about the Court may

11 not even realise that he or she is violating the confidentiality of the Court.

12 But what about a person with bad intentions who is familiar with the Court will say,

13 "Oh, this is a confidential document. But the rules of confidentiality were not

14 respected. Therefore, I am free to do as I wish with them, and I have bad intentions,

15 and my goal is to give information to some people about the identity of certain

16 witnesses and the information to be found in the statement."

17 Now, this moment of vulnerability continues through time. Once the statements get

18 into Ringtail or other databases at the Court, the documents remain where they were

19 at one particular point in time, either hard copies or electronic versions. They are

20 still alive, so to speak, because the statements were taken, and the risks continue.

21 You lead me to speaking about risk, and I shall do so, and I conclude that the risk is

22 major. It is shown by the lack of a mark on the document. If -- I don't think it's

23 necessary to prove the validity of these arguments. There's a reason for having

24 things like "Confidential" marked on a document.

25 PRESIDING JUDGE KORNER: [11:18:12] But, Mr Laucci, taking your point about

1 somebody with bad intentions getting hold of one of these documents, then if that is
2 right, it isn't going to matter at all that the document is marked "Confidential" to him
3 because he's going to go ahead and interfere with the witness. I mean that's so
4 obviously common sense, it doesn't need anything further.

5 But do you have any evidence? Because that is -- you're asking for a whole host of
6 documents or witness statements to be excluded from evidence because you say there
7 is a risk that there will be interference.

8 Do you have any evidence at all to suggest that there has been in this case any
9 interference with witnesses? And that requires a simple yes or no, Mr Laucci.

10 MR LAUCCI: [11:19:23] In that case, it's a no.

11 PRESIDING JUDGE KORNER: [11:19:26] Thank you.

12 Yes. Right, the final matters on the list, there are some other matters, but I'm going
13 to deal with I think after the break is the page limits for filings. We reduced it from
14 20 to 12. I didn't think it would be necessary to make it clear, but I do make it clear
15 for a number of reasons, without addressing either party specifically. Twelve is the
16 limit. That does not mean that every written filing needs to be 12 pages. If it can be
17 said in two pages, then say it in two pages. I'll leave the limit where it is at the
18 moment. But can I say, if we get a plethora, if I can use that expression, of filings
19 which, in our view, do not require 12 pages, then I'm afraid the page limit will be
20 reduced again. So that if you want to go over it, you will have to apply.

21 The second thing I'll float now so that we can discuss this after the break, is, it is our
22 intention to hold -- no, I don't need you to say anything, Mr Laucci, on the page limit.

23 MR LAUCCI: [11:21:01](Interpretation) Even if you are not targeting anyone in
24 particular, but it's understood, but we are learning, and this is a process. We are
25 learning these things. And so far, believe me, it has been quite hard to bring our

1 filings down to 12 pages, 10, really, when you consider that the first page is the -- just
2 the title page.

3 In accordance with your instructions, we have tried to recall that some things are
4 meant for oral arguments.

5 Now, how are we to, in the future, and, regularly, implement this requirement for
6 additional oral requirements as necessary? Because truth be told, there are some
7 arguments that need to be developed and fleshed out in detail; otherwise, they are not
8 understood. And we entirely agree to make half in oral submissions. But this
9 morning, for example, we thought we would say something about the need to resume
10 activities in the field, but that will be later.

11 PRESIDING JUDGE KORNER: [11:22:39] But, Mr Laucci, as you've seen -- I'm sorry,
12 I think I ought to make this clear. As you've seen, what we're doing is we're inviting
13 the parties to add to their written submissions orally. The reason we haven't dealt
14 with your filings over the activities in the Sudan is for the reasons that I've explained.
15 We are not discarding them. We're going to leave them for further discussion, and
16 that's what I was coming to now, which is, it is our intention, subject to the parties
17 being able to attend, to hold a status conference to deal with as many of the matters
18 that will have arisen and have already arisen and not yet been ruled upon and any
19 further ones between 7 and 11 February of 2022.

20 That will include also - it is our intention in order to try and streamline the trial when
21 it starts - a discussion of the witnesses because by then, we will have the witness list
22 from the Prosecution, and to which witnesses are going to be necessary, which are
23 going to be the subject of cross-examination, and how long and so on and so forth.
24 So, as I say, we want to try and deal with as many of the issues as possible during
25 those five days. We've set aside five days. It may not take five days, but I give you

1 the date now so that you, the parties, can think about this over the adjournment and
2 come back with any difficulties that they have this afternoon.

3 Yes, as I say, there are a couple of other matters, but I'll deal with that when we will
4 give our ruling this afternoon orally, as I've already indicated, on the two matters, the
5 victims' participation and the ABC Approach and the admissibility of the witness
6 statements point, which has just been made.

7 Yes, so we'll sit again - thank you very much, everybody - at 2.30.

8 THE COURT USHER: [11:25:08] All rise.

9 (Recess taken at 11.25 a.m.)

10 (Upon resuming in open session at 2.32 p.m.)

11 THE COURT USHER: [14:32:40] All rise.

12 Please be seated.

13 PRESIDING JUDGE KORNER: [14:33:04] Yes, this is the resumed status conference.

14 As I indicated when we adjourned, the Trial Chamber will give oral rulings now on
15 two out of the Defence motions. The first on the victim participation modalities
16 and - what's been called colloquially - the "ABC Approach," and then the submission
17 in respect of the witness statements not marked as "Confidential."

18 Beginning, therefore, with the victim participation aspect.

19 The Defence request relates to the continued use of electronic victims' application
20 forms and the ABC Approach for the admission of victims who will participate in the
21 proceedings, which has been given the number filing 497.

22 In addition to the written application, the Chamber heard further oral submissions
23 this morning from the Defence, the Legal Representative of the Victims and from the
24 Registry on the issues raised by the Defence in respect of the Registry, particularly on
25 the aspect of confidentiality.

1 In respect of the Defence's challenge to the use of electronic application forms, the
2 Chamber notes this has already been litigated extensively at pretrial. There were
3 two decisions, 198 and 254.
4 The Chamber, having considered all the arguments advanced, sees no reason to
5 depart from the determination made by the Pre-Trial Chamber in its decision number
6 198 at paragraph 8; namely, that such --
7 "[...] electronic forms have been used in previous cases, [...] that they tend to expedite
8 the collection and processing of information and foster wider victim participation,
9 especially when there is limited access to potential victims in the field." Close quotes.
10 As pointed out by the Legal Representative for Victims, the Defence has not raised
11 additional matters in support of its submissions to us on this point.
12 In respect of the use of the ABC Approach, the Defence's contention that information
13 provided by the victims was relied upon by the Pre-Trial Chamber during the
14 confirmation of charges, the Chamber considers that this argument misconstrues the
15 concept of victims' participation and has no real bearing on the issue at hand.
16 As noted by the Appeals Chamber in the Said case, judgment at paragraph 46, there is
17 a distinction between the procedure for the admission of victims and the modalities of
18 participation once they are admitted to participate. The adoption of the ABC
19 Approach is also without prejudice to any disclosure obligation vis-à-vis the Defence,
20 which, as noted by the Appeals Chamber, remains unaffected.
21 Second, the Defence submits that the appointment of the former Legal Representative
22 of Victims, Ms Clooney, as the Special Adviser to the Prosecutor for Darfur, violates
23 the right to a fair trial. Mr Laucci, in oral submissions, accepted that he was not
24 making any submissions that Ms Clooney had breached her professional obligations
25 by revealing confidential information gained while legal representative for the

1 victims.

2 In any event, no showing has been made in what manner Ms Clooney's appointment
3 violates the accused's right to a fair Trial Chamber or how it impacts on the
4 continuation of the ABC Approach during the trial proceedings.

5 Third, the Defence submits that given the limited number of victims currently
6 participating, the ABC Approach, as confirmed by the Appeals Chamber in the Said
7 case, does not apply in this case. Although the number of participating victims is
8 a factor to consider, it is not the sole determinative factor favouring the adoption of
9 the ABC Approach.

10 In particular, the Chamber notes that another factor to consider is the need to
11 minimise risks --

12 "to the safety, physical and psychological well-being, dignity and privacy of the
13 victims" pursuant to "article 68(1) of the Statute."

14 And that comes from the appeals judgment at paragraph 56.

15 Moreover, the Chamber notes the Victims Legal Representatives' submissions that
16 more victims are expected to submit application forms in the upcoming months, and
17 that submission is supported by what was said this morning on behalf of the Registry,
18 and I quote from the uncorrected transcript:

19 "The confirmed charges in this case lead us to surmise that the number of potential
20 victims affected by the alleged crimes are likely to be in the thousands."

21 And that --

22 "[...] the charge of intentionally directing attacks against the civilian population and
23 forceful transfer [...] for Kodoom and Bindisi and other incidents."

24 Fourth, the Defence submits that the Registry has failed to comply with the rules of
25 confidentiality for the victims' application. A Trial Chamber must be in possession

1 of good and sufficient evidence in order to interfere with the internal procedures of
2 the Registry, in this instance, on the collection of victims' applications and their
3 registration in the case file. Not only has no such evidence been provided, but based
4 on the submissions made by the Registry on this issue, the Chamber is satisfied that
5 all proper measures have been taken and that it has applied -- the Registry has
6 applied the same standards and measures as it has in other cases.

7 Accordingly, for the reasons given, the Chamber rejects the Defence request in its
8 totality.

9 Second, the inadmissibility of witness statements not marked as "Confidential".

10 The Defence submitted in writing that witness statements improperly marked as ICC
11 "Restricted" instead of "Confidential" rendered them inadmissible in evidence.

12 Again, this is a submission which has been made before.

13 In one sense, it could be said that the request is untimely and speculative as the
14 Prosecution is yet to present its list of evidence and list of witnesses and, accordingly,
15 the Prosecution has not yet submitted any witness statement before the Chamber.
16 However, given the wide ranging and general nature of this application, the Chamber
17 considers that it can and indeed should give a ruling on the merits in order to provide
18 clarity to the parties for the future.

19 The Defence accept that however the statements are marked, all parties regard and
20 treat the statements as confidential. When distilled to its essence, the Defence
21 submission has two strands; namely, first, if statements are not marked "Confidential"
22 and fall into the hands of a person who, in some way, has an interest in interfering
23 with the witness, this failure will encourage them.

24 Second, that the failure by Registry and the Office of the Prosecutor to change the
25 system of marking should be punished by the requested exclusion and thereby act as

1 an impetus for change.

2 The Pre-Trial Chamber in its decision numbered 402 at paragraph 42 said, and I

3 quote:

4 "While the Chamber agrees that it would be preferable for all confidential documents

5 to be clearly marked as such in accordance with the Court's policies on information

6 security, it considers that the avowed risks are overstated and largely speculative.

7 The Court's practice over the years certainly does not suggest that the Prosecutor's

8 failure to expressly *mark* witness statements as confidential - as opposed to *classifying*

9 them as such - has been a major risk factor. Indeed, all parties and participants

10 involved in the proceedings are bound by the confidentiality level assigned by the

11 Prosecutor as it is registered in the meta-data. Moreover, confidential information

12 may, in principle, only be disclosed in the context of an investigation under specific

13 and strict conditions. Under these circumstances, the Chamber is not convinced that

14 the Prosecutor's failure to mark witness statements as confidential has elevated the

15 risk that any of the witnesses in this case may have been subjected to interference,

16 threats or corruption."

17 And Mr Laucci, in oral submissions this morning, confirmed that there was no

18 evidence to suggest that there had been any interference.

19 This Chamber not only agrees with the reasoning of the Pre-Trial Chamber, but

20 considers that this is a submission lacking in any conceivable merit.

21 Accordingly, the Defence request is denied.

22 Yes, so that deals with, as I say, the two Defence requests that we felt able to deal with

23 today.

24 Mr Laucci, we have not forgotten - nor will we - the fact that you have still

25 outstanding a number of different requests in respect of Sudan.

1 This morning, I mentioned that it was our intention to hold a lengthy
2 status conference, but I understand that you would like to have one before the
3 Christmas break.

4 If that -- we don't dissent from that at all. If you feel it will be of help, depending on
5 what the situation is in the Sudan, and subject to all parties' availability, we are
6 prepared to hold one on 17 December.

7 MR LAUCCI: [14:47:02](Interpretation) Thank you very much, your Honour.

8 Truth be told, this proposal is a proposal that depends entirely upon the instability in
9 the Sudan and the impossibility of predicting how things will unfold in Sudan. You
10 have chosen to deal with all these issues and these requests during a status conference,
11 possibly in February. Very well. That means that until February, if I've understood
12 correctly, there will be no activity in Sudan. No activity in Sudan can be held or
13 organised until any -- until things are clarified. Given the consequences this
14 situation has for the proceedings, the victims, the witnesses, on the staff of the Court, I
15 think that having in December, a brief hearing to take stock of matters - and perhaps
16 the Registry could appear and give us an update on the situation - could we hope for
17 such a thing in the future?

18 I think that would be a good measure because truly, the impact on the entire
19 proceedings, the victims, the witnesses, is quite considerable and needs to be
20 monitored closely.

21 PRESIDING JUDGE KORNER: [14:48:48] The fact that we weren't intending to hold
22 another status conference until February does not mean that we were going to let
23 things slide. If the political situation has some kind of resolution in the Sudan,
24 which does allow for investigations to be carried out and people to go back, then we
25 would expect that to happen. And the Registry is fully aware of this and no doubt

1 would provide a report once they have the information.

2 As I say, it's not that we intended everything to sit there until February. That -- to
3 the contrary. But, as I say, it's entirely a matter for you and for the other parties. It
4 seems to me perhaps not un-sensible, as you suggest, that we take stock in December
5 before the break.

6 MR LAUCCI: [14:49:47](Interpretation) There you have it. Indeed, that was the
7 proposal that we were making. Obviously, if things were to improve, we all hope
8 that it might become a possibility to redeploy Court staff to the Sudan. Of course,
9 we will have to have the proper discussion that we have not had today about, for
10 example, the identification of minimal conditions for resuming or continuing
11 activities in the Sudan. That is a discussion that we expected to have today. We
12 understand why we have not had such a discussion, and I suppose we will see
13 activities...(Overlapping speakers)

14 PRESIDING JUDGE KORNER: [14:50:42] Can we turn -- Mr Nicholls, do you see
15 any problem with 17 December?

16 MR NICHOLLS: [14:50:48] Thank you. No, your Honour. No objection at all to
17 a status conference then as well, in addition to the one on --

18 PRESIDING JUDGE KORNER: [14:50:58] Yes.

19 MR NICHOLLS: [14:50:59] -- February 7th.

20 PRESIDING JUDGE KORNER: [14:50:59] In February, yes.

21 MR NICHOLLS: [14:50:58] For the week of February 7th, I should say.

22 PRESIDING JUDGE KORNER: [14:51:04] Yes.

23 Yes, Ms von Wistinghausen?

24 MS WISTINGHAUSEN: [14:51:10] Yes, the same here. I see no problem. I may
25 ask for leave to attend remotely. I can't say that today, but I don't think that should

1 be a problem.

2 PRESIDING JUDGE KORNER: [14:51:18] No. Very well. Yes. Well, then, in
3 which case, we will order a status conference to take place on 17th of December,
4 subject to -- and I understand there will be courtroom availability that day.

5 Yes, there are a few other matters then that we're still not -- firstly, Ms von
6 Wistinghausen, your request to delay your trial brief, I was minded to agree to that;
7 however, I was reminded also by my fellow judges that your brief has to be in before
8 the Defence brief. And, therefore, I think the date will have to remain that, but we'll
9 say the same as the Defence brief; that you are not precluded - if you receive any
10 further information - from amending or providing an addendum to that trial brief.

11 MS VON WISTINGHAUSEN: [14:52:27] Okay, that's well noted. Thank you.

12 PRESIDING JUDGE KORNER: [14:52:31] Yes, thank you.

13 Yes, the last few things are all minor, but nonetheless not unimportant.

14 I think I already mentioned it this morning, but I'll just reiterate that what is proposed
15 to happen in the February status conference, is, that we deal with any motions of
16 which rulings have not already been given and which require further oral
17 submissions and deal with effectively the witnesses to be called, the length. It would
18 obviously give the parties at that stage, once we know what the witnesses are, the
19 length of time that they will be given to call their evidence.

20 I make it clear that it's our view that it is better, rather than saying if the Prosecution
21 have X amount of time with the witness, the Defence have the same amount of time,
22 that they will be -- you will be given overall -- and the victims' representatives, you'll
23 just be given overall figures. And it's -- how you use it is a matter for you.

24 But -- and also, as I say, it will really be, I hope, to get the case into some sort of order
25 so that it starts on 6 April.

1 Next, can I deal, as I say, with a few minor matters.

2 Would counsel please all use the secure email when sending emails to the Court, not
3 their personal email address. Confidential information comes out in these emails
4 and one is in breach, I believe, of most regulations by using personal email, which is
5 not secure. So can I just mention that.

6 Would counsel also, please, for the Legal Representatives of the Victims, could they
7 copy each other, please, instead of sending individual emails to the court officers or to
8 the Registry. They're acting -- I emphasise this, this is one team, and they should
9 copy each other as well as the other side, unless it's confidential, all the other parties
10 on emails.

11 We would emphasise that notwithstanding the continuing change in regulations as
12 far as social distancing is concerned and the like, the rule will be that counsel
13 involved in the case should appear in person, unless they've got a good reason for
14 asking to appear remotely. And so if a request is made to appear remotely, we
15 emphasise a reason must be given as to why they wish to do it.

16 Yes, I rather think, unless I'm reminded by anybody else, that's all the matters. Oh,
17 yes, I've just remembered.

18 Counsel -- all counsel should remember that there are certain aspects, particularly of
19 an administrative procedure, which the Trial Chamber, the judges, have no power to
20 make orders about. For example, legal aid and the like. And therefore, would
21 counsel, all counsel, please consider, before making a request which relate to
22 administrative matters, whether the Trial Chamber has any power to make any orders
23 in respect thereof.

24 Yes. I'll just check. Does anybody else think there's anything?

25 (Trial Chamber confers)

1 PRESIDING JUDGE KORNER: [14:57:42] I'll just remind Ms von Wistinghausen that
2 you're going to put something in writing about the question of the protocol.
3 Right. Well, then the last matter is not a legal matter but a personal one, which I am
4 mentioning at this stage in the interests of transparency. It hadn't occurred to me to
5 mention it before on the last occasion, which was the first one, but I'm doing so now.
6 Mr Nicholls, who is lead counsel for the Office of the Prosecutor in this case, some 17
7 years ago worked on my team when I was with the Office of the Prosecutor at the
8 ICTY, the International Criminal Tribunal for the Former Yugoslavia.
9 This is a situation, that is to say, judges and counsel who know each other
10 professionally, which regularly occurs in my domestic jurisdiction and I anticipate
11 even more so in the small world which comprises international criminal lawyers.
12 I'm mentioning it, as I say, for the sake of transparency. It has not had and will not
13 have any impact on the decisions which are made by this Trial Chamber, which, of
14 course, is composed of three judges.
15 So unless there are any other matters to be raised, then that concludes this hearing.
16 I thank all parties very much for their helpful approach to it.
17 THE COURT USHER: [14:59:43] All rise.
18 (The hearing ends in open session at 2.59 p.m.)